

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2010-____-C**

IN THE MATTER OF PETITION OF)	
CRICKET COMMUNICATIONS, INC. FOR)	
ARBITRATION OF RATES, TERMS AND)	Petition Of Cricket Communications, Inc.,
CONDITIONS OF INTERCONNECTION)	For Arbitration of Rates, Terms and
WITH BELL SOUTH)	Conditions of Interconnection with
TELECOMMUNICATIONS, INC. D/B/A)	Bellsouth Telecommunications, Inc. D/B/A
AT&T SOUTH CAROLINA)	AT&T South Carolina

Pursuant to Section 252(b)(1) of the Communications Act of 1934, as amended (the “Act”),¹ and the Public Service Commission of South Carolina (“Commission”) Rules of Practice and Procedure, Cricket Communications, Inc. (“Cricket”) hereby petitions the Commission for arbitration of unresolved issues arising out of the negotiations of an interconnection agreement between Cricket and BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina (“AT&T”) (hereafter, Cricket and AT&T may be collectively referred to as the “Parties”) in the state of South Carolina.

Cricket and AT&T are currently parties to an interconnection agreement in South Carolina. AT&T sent notice of its intent to terminate that agreement in October of 2009. In response, Cricket provided AT&T notice of its intent to continue operating under the agreement until negotiations over the terms of a successor agreement were complete. The Parties have engaged in good faith negotiations of such terms, but a number of unresolved issues exist between the Parties. Accordingly, Cricket hereby petitions the Commission to arbitrate the unresolved issues.

¹ 47 U.S.C. § 252(b)(1).

I. INTRODUCTION

Cricket is a commercial mobile radio service (“CMRS”) provider licensed by the Federal Communications Commission (“FCC”) to provide wireless voice and broadband services in South Carolina, and thirty-three other states across the country. Cricket has deployed an all digital, 3G (third generation) network to provide innovative low-cost, high value, wireless services to its subscribers. In particular, Cricket offers unlimited prepaid voice and broadband services to subscribers without an obligation to enter into service contracts, and without the use of credit checks, or the assessment of overage fees. Cricket provides these low-cost services within its licensed service territory in South Carolina. In so doing, Cricket competes directly with other wireless providers and wireline companies in South Carolina, thereby bringing the benefits of competitive choices to the residents of South Carolina.

In order to provide these competitive retail services in a cost effective manner Cricket must be able to obtain wholesale interconnection services and facilities from the incumbent telephone company upon fair and reasonable terms. For example, Cricket must be able to obtain fair and reasonable terms governing the cost of interconnection facilities it uses to transport traffic to, and from, the incumbent telephone company’s network. In addition, where traffic exchanged between Cricket and AT&T is roughly balanced, Cricket must be able to obtain equitable and efficient reciprocal compensation terms. Finally, where Cricket incurs costs associated with the termination of other carriers’ traffic on Cricket’s network, it must be able to obtain reasonable terms that ensure Cricket is properly compensated for its operational costs.

Because the *current* interconnection agreement between AT&T and Cricket generally includes the equitable principles described above, during negotiations over terms for a successor agreement, Cricket has proposed to extend the term of the Parties’ current agreement for a period

of three years. This approach would reduce the transaction costs associated with continued negotiations of disputed terms, while at the same time eliminating the need for a costly and time-consuming arbitration proceeding before this Commission.

Indeed, an extension of the current agreement is identified in this petition as a “threshold” disputed issue that Cricket asks the Commission to resolve before other disputed issues.² The extension issue is a threshold issue for the simple reason that if the Commission concludes that extending the current agreement is appropriate, all other disputed issues between the Parties will be moot, and the Commission can close this proceeding without further action. In the alternative, if the Commission concludes that extension of the agreement is not appropriate, it can proceed with a formal arbitration proceeding (with all of the necessary discovery, hearing and briefing phases) to resolve all of the disputed issues identified herein.

As an alternative to its extension proposal, Cricket has proposed contract language that seeks to equitably balance interconnection costs and obligations between itself and AT&T in a successor agreement. For example, Cricket has proposed language that would allocate the costs of interconnection facilities based upon each company’s “proportional use” of the facility. In addition, Cricket has proposed language that would permit the parties to use a cost efficient “in-kind” billing process when the traffic exchanged between Cricket and AT&T is roughly balanced. When these wholesale inputs are provided on fair, and reasonable, terms Cricket can maintain lower operating expenses. That, in turn, permits Cricket to continue providing the valuable low-cost wireless voice and broadband services to South Carolina residents that are simply not available from many existing CMRS providers.

² Cricket also asks the Commission to resolve one other disputed threshold issue in advance of all others. That issue is whether transit traffic arrangements are governed by this Commission’s authority over intrastate telecommunications traffic and Section 251 of the Act.

AT&T, however, has rejected these proposals during negotiations. Instead, AT&T has proposed terms that are neither fair nor reasonable, and which would force Cricket to assume more than its fair share of the costs associated with interconnection and exchange of traffic. AT&T's proposed terms, if accepted, would needlessly increase operational costs of a valuable competitive service provider in South Carolina. Therefore, if the Commission should decide that the current agreement between the Parties should not be extended, the Commission should adopt Cricket's reasonable and equitable proposals on those disputed issues in this proceeding.

In support of this Petition, Cricket states as follows:

II. PARTIES

1. Cricket is a Delaware corporation whose principal place of business is 5887 Copley Drive, San Diego, California 92111. Cricket is a CMRS provider licensed by the FCC to provide wireless services in South Carolina, and other states, and is classified as a "telecommunications carrier" under the Act.

2. The names and addresses of Cricket's representatives in this proceeding are as follows:

K.C. Halm	John J. Pringle, Jr.
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3. AT&T is an incumbent local exchange company ("ILEC") as defined under Section 251(h) of the Act, 47 U.S.C. § 251(h), and is authorized to provide telecommunications

services in South Carolina. AT&T maintains various operations in South Carolina, and a regional office in Georgia, at 675 West Peachtree St., N.E., Atlanta, Georgia 30375.

4. On information and belief, the name, address, and contact information for AT&T's primary representatives regarding this matter are:

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Daniel Dernulc
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III. JURISDICTION

5. This Commission has jurisdiction over this Petition pursuant to Section 252(b)(1) of the Act. 47 U.S.C. § 252(b)(1). Under the Act, parties to the negotiation of an interconnection agreement may petition the state commission for arbitration of any unresolved issues arising out of such negotiations. 47 U.S.C. § 252(b).

6. This Commission has jurisdiction to arbitrate disputed issues between AT&T and competitors in the state of South Carolina, including issues arising from the merger conditions imposed upon AT&T in previous FCC orders.

7. Further, this Commission has primary jurisdiction over general issues regarding the interpretation and implementation of interconnection agreements, and matters concerning the commencement and termination dates of carrier-to-carrier contracts.³

8. Under Section 252(b)(1) of the Act, the request for arbitration may be made by either party at any time during the period from the 135th to the 160th day (inclusive) after the date on which the ILEC receives a request for negotiations under Section 251 of the Act. 47 U.S.C. §§ 251, 252(b)(1).

9. For purposes of calculating the statutory negotiations window under Section 252, the Parties negotiation window opened on December 30, 2009. *See* Exhibit A-1, attached hereto. Accordingly, the arbitration window opened on the 135th day of negotiations, May 14, 2010, and will close on the 160th day of negotiations, June 8, 2010.

IV. HISTORY OF NEGOTIATIONS AND RESOLVED ISSUES

10. AT&T and Cricket are parties to an existing interconnection agreement in South Carolina (the “Cricket-AT&T South Carolina Agreement”). The Cricket-AT&T South Carolina Agreement was filed with, and approved by, the Commission in Docket No. 2008-376-C.

11. On October 28, 2009, pursuant to the term and termination provisions of the Cricket-AT&T South Carolina Agreement, AT&T sent notice to Cricket of AT&T’s intent to terminate that agreement, and requested negotiation of a successor agreement.

12. In response to AT&T’s notice, Cricket delivered to AT&T notice of Cricket’s intent to continue operating under the Cricket-AT&T South Carolina Agreement until the terms of a successor agreement were established. Since that time the Parties have met on a regular

³ *See Verizon Maryland, Inc. v. Public Service Commission of Maryland*, 535 U.S. 635, 642 (2002) and *BellSouth Telecommunications, Inc. v. MCIMetro Access Transmission Services*, 317 F.3d 1270, 1275 (11th Cir. 2003).

basis during the last five months to negotiate terms of an interconnection agreement for the state of South Carolina.

13. Negotiations between the Parties' representatives have generally focused on four substantive areas: (1) general terms and conditions; (2) network interconnection and traffic exchange; (3) reciprocal compensation and interconnection pricing terms; and, (4) transit traffic terms.

14. Although a number of unresolved issues remain, during negotiations the Parties have resolved numerous issues. Generally speaking, the resolved issues, described below in paragraphs 15 and 16, pertain to areas outside of the core issues of interconnection, traffic exchange, and compensation.

15. In particular, the Parties have resolved numerous issues relating to the general terms and conditions, collocation, number porting, and 911 obligations of each Party. With respect to the general terms and conditions, the Parties resolved issues surrounding: changes of law, amendments to the agreement, dispute resolution processes, mutual obligations with respect to letters of authorization, coordinated actions in response to requests from law enforcement agencies, network management obligations and principles, and many other terms and conditions.

16. With respect to the interconnection issues, the Parties resolved several issues, including: indemnity obligations associated with transited traffic and notice obligations where new interconnection arrangements are established. The Parties resolved a number of other open issues in other parts of the negotiated draft interconnection agreement.

17. In addition, the Parties no longer have disputes over the number portability and 911 provisioning obligations under the new interconnection agreement proposed by AT&T. All resolved issues are incorporated by reference to the attached exhibits showing disputed language.

All language shown as “normalized” language (i.e. plain font) in Exhibit C, is resolved and no longer disputed between the Parties.

V. STATEMENT OF UNRESOLVED ISSUES AND EACH PARTY’S POSITION

18. Notwithstanding the Parties’ success with resolving many lesser issues, significant disputes remain over a number of important issues. First, as a threshold issue, is the dispute over whether the current Cricket-AT&T South Carolina Agreement should be extended for a period of three years. A second threshold issue is whether transit traffic terms should be a component of the Parties’ interconnection agreement in South Carolina. Beyond these threshold issues, the largest number of remaining disputed issues involve network interconnection, traffic exchange, reciprocal compensation and interconnection pricing terms, and transit traffic terms.

19. As noted above, the unresolved issues fall into two separate categories: threshold issues, and non-threshold issues. The threshold issues should be resolved in an initial phase of the proceeding because their resolution will dictate the scope of the entire proceeding. The second category of issues, so-called “non-threshold” issues, are simply those unresolved issues concerning specific disputed contract language which the Commission should address (if necessary), following resolution of the threshold issues.

20. All of the unresolved issues between Cricket and AT&T, and each Party’s respective position as to each unresolved issue, are set forth in the attached disputed issues matrix, attached hereto as Exhibit B. For purposes of this Petition, Cricket hereby incorporates by reference the matrix of disputed issues, statement of each Party’s position, and all other related information as set forth in Exhibit B.

A. Threshold Issue 1 – Extension of the Cricket-AT&T South Carolina Agreement

21. During negotiations over the terms of a successor to the Cricket-AT&T South Carolina Agreement, Cricket proposed a resolution of all of the disputed issues then in existence. Specifically, on May 4, 2010, as part of the ongoing negotiations, Cricket sent AT&T correspondence outlining its proposal to extend the Parties' current interconnection agreement for three years pursuant to Merger Commitment 7.4 of the FCC order approving the merger of AT&T and BellSouth Telecommunications.⁴ Specifically, Cricket proposed that the term of the Cricket-AT&T South Carolina Agreement be extended three years from the date of AT&T's termination notice letter (October 28, 2009). Cricket's proposal is attached hereto as Exhibit A-2.

22. Cricket's proposal to extend the term of the Parties' current agreement relies upon the commitment made by AT&T to the FCC as a condition of approval of its merger with BellSouth. On March 4, 2006, AT&T's parent corporation, AT&T Inc., entered into an agreement to merge with the BellSouth Corporation, the parent company of BellSouth Telecommunications, Inc. On March 31, 2006, AT&T Inc. and BellSouth Corporation filed a series of applications seeking FCC approval of the merger. To gain approval of its merger with BellSouth, AT&T agreed to abide by conditions aimed at "reducing transaction costs associated with interconnection agreements" (collectively referred to as the "Merger Commitments"). Once AT&T made these commitments the FCC approved the merger on December 29, 2006. These merger commitments remain in place for a period of forty-two (42) months from the date of approval, or until June 29, 2010.

⁴ *In re AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, FCC 06-189, ¶ 14, 17 (released March 26, 2007) ("Merger Order").

23. Included in the Merger Commitments made by AT&T were a number of conditions intended to reduce transaction costs associated with the negotiation of interconnection agreements with competitors. Among other commitments, in Merger Commitment 7.4, AT&T specifically agreed that:

The AT&T/BellSouth ILECs shall permit a requesting telecommunications carrier to extend its current Interconnection Agreement, *regardless of whether its initial term has expired*, for a period of up to three-years, subject to amendment to reflect prior and future changes of law. During this period, the Interconnection Agreement may be terminated only via the carrier's request unless terminated pursuant to the agreement's "default" provisions.⁵

24. Thus, in reliance upon the plain language of Merger Commitment 7.4, Cricket's proposal was simply this: the Parties should extend their current agreement for a period of three years, subject to amendment to reflect prior and future changes of law.

25. During subsequent negotiations between the Parties' representatives in late April and early May, AT&T verbally communicated its rejection of Cricket's proposal to extend the Cricket-AT&T South Carolina Agreement for a period of three years. Specifically, AT&T's representatives would not agree to extend the term of the agreement, asserting that Merger Commitment 7.4 does not apply to the existing interconnection agreement between Cricket and AT&T in South Carolina. As of the date of this filing AT&T has not responded in writing to Cricket's proposal.

26. At an earlier point in the Parties' negotiations, on March 10, 2010, Cricket's negotiator forwarded a copy of the federal district court of Michigan's recent opinion affirming the Michigan PSC's order approving an extension of the Sprint-AT&T agreement in Michigan

⁵ Merger Order, Appendix F, Merger Commitment 7.4, p 149 (emphasis added). The Merger Commitments are effective for a period of forty-two months from the AT&T/BellSouth merger closing date.

for a period of three years.⁶ During a subsequent teleconference between the Parties concerning disputed negotiations issues Cricket and AT&T's negotiators discussed the impact of the federal court's decision, and at least four other state commission decisions ordering AT&T to extend the term of its interconnection agreements with competitors for a period of three years pursuant to Merger Commitment 7.4.

27. Despite the growing list of legal authorities supporting Cricket's request, AT&T continues to maintain its position that it would not agree to an extension of the term of the Cricket-AT&T South Carolina Agreement. Accordingly, the issue remains unresolved between the Parties, and Cricket asks the Commission to arbitrate this dispute as a threshold issue in this case.

28. Extension of the Cricket-AT&T South Carolina Agreement is a threshold issue because its resolution will dictate the scope of this proceeding. Should the Commission conclude that extending the term of the Cricket-AT&T South Carolina Agreement is appropriate, that agreement will continue to govern the Parties' rights and obligations for three more years. That, in turn, will eliminate the need for a successor agreement. In addition, all of the other disputed issues associated with the negotiation of a successor agreement will be moot, as no new agreement will be necessary. As such, if the Commission concludes that extension is appropriate, it can then terminate this proceeding without the need for any further action.

B. Threshold Issue 2 – Transit Traffic

29. A second threshold issue concerns the scope of AT&T's obligations to provide transit traffic service arrangements to Cricket pursuant to section 251 of the Act, and the Commission's authority over intrastate traffic. Cricket has proposed language that would require

⁶ *Mich. Bell Tel. Co. v. Isiogu*, No. 09-12577, 2010 U.S. Dist. LEXIS 18182, (E.D. Mich. March 2, 2010).

AT&T to make such terms available to Cricket. AT&T has opposed this proposal, and instead proposed terms that would exclude transit traffic terms from the scope of the agreement that will be arbitrated and approved by this Commission.

30. This issue is a threshold issue because the Commission must confirm that transit traffic service arrangements are governed by section 251 of the Act, and the Commission's authority over intrastate traffic. If so, then the Parties must include such terms in their final agreement, and Cricket will ask the Commission to arbitrate the disputed contract language between AT&T and Cricket on those issues.

C. Remaining (Non-Threshold) Unresolved Issues

31. Of the approximately twenty disputed non-threshold issues, roughly two-thirds involve disputes over the network interconnection, traffic exchange, reciprocal compensation and interconnection pricing terms discussed in the introductory paragraphs of this Petition.

32. Each disputed issue is set forth in detail in a disputed issues matrix, attached hereto as Exhibit B. The disputed issues matrix identifies the issue, relevant contract section references, each Party's proposed language on such issue, and each Party's position on the issue. Exhibit C includes the Parties' proposed interconnection agreement language.

33. All of the disputed issues identified in Exhibit B are incorporated herein by reference.

VI. REQUEST FOR RELIEF

WHEREFORE, Cricket respectfully requests that the South Carolina Public Service Commission grant the following relief:

34. Address and decide the threshold issues noted above, in part, by approving a three year extension of the current Cricket-AT&T South Carolina Agreement pursuant to Merger Commitment 7.4.

35. With respect to such threshold issues,

A. If the first threshold issue is decided in Cricket's favor, no further proceeding is necessary.

B. However, if the first threshold issue is decided in AT&T's favor, the Commission must convene a hearing and arbitrate the unresolved issues between Cricket and AT&T within the timetable specified by the Act.

36. Retain jurisdiction over this Petition until the Parties have submitted an agreement for approval in accordance with section 252(e) of the Act.

37. Take such other relief that it deems just and reasonable under the circumstances.

[Signature Page to Follow]

Respectfully submitted,

s/ John J. Pringle, Jr.

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June 8, 2010

EXHIBITS

EXHIBIT A:

- A-1: Correspondence from AT&T Negotiator to Cricket Negotiator
Establishing Negotiations Window Under Section 252
- A-2: Cricket Negotiation Proposal to AT&T Regarding Proposed Extension of
the Parties' Current Interconnection Agreement

EXHIBIT B: Disputed Issues List (Matrix) of Parties' Respective Positions and Proposed
Contract Language on All Unresolved Issues

EXHIBIT C: Parties' Proposed Interconnection Agreement Language

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Petition was served upon the following persons by via electronic mail service, unless otherwise specified, on the 8th day of June 2010:

Via electronic and first-class mail service

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